

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0389RST

Sales and Use Tax

For Years 1990, 1991, 1992, and 1994

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales Tax – Assessment of sales tax on services and tangible personal property sold by funeral home.

Authority: Ind. Code § 6-2.5-2-1;
 Ind. Code § 6-2.5-6-7;
 Ind. Code § 6-8.1-5-1;
 Indiana Department of Revenue Sales Tax Information Bulletin #49 (Dec. 1997).

The taxpayer protests the assessment of retail sales tax on its provision of services and tangible personal property to its customers.

II. Sales Tax – Responsible officer liability.

Authority: Ind. Code § 6-2.5-9-3;
 Ind. Code § 6-8.1-5-1;
Indiana Department of State Revenue v. Safayan, 654 N.E.2d 270 (Ind. 1995).

The taxpayer protests personal liability for retail sales tax due on the provision of services and tangible personal property to his customers.

STATEMENT OF FACTS

The taxpayer is the owner of a funeral home in Indiana. The funeral home provides funeral services, along with tangible personal property associated with funeral services, to its customers. The owner, as a responsible officer, was assessed sales tax liability for

the services and tangible personal property provided by the funeral home. The time period the assessment related to was the years 1990, 1991, 1992, and 1994.

The taxpayer failed to appear for administrative hearings scheduled for June 22, 2000, and July 25, 2000. The taxpayer was given additional time, until August 11, 2000, to submit evidence in support of his protest but failed to do so. The taxpayer's protest letters do not cite any statutes, regulations, or court cases, or present additional facts or arguments. Consequently, this Letter of Findings is based solely upon the information contained in the taxpayer's Department of Revenue file.

I. Sales Tax – Assessment of sales tax on services and tangible personal property sold by funeral home.

DISCUSSION

The taxpayer received numerous liability notices for retail sales tax that was not paid or paid late, and for checks issued to the Department that were returned for insufficient funds. Additional assessments for sales tax were made based upon the best information available.

(a) An excise tax, known at the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Ind. Code § 6-2.5-2-1.

The Department has issued an information bulletin specifically dealing with the application of sales tax to the provision of funeral services and tangible personal property by morticians and funeral directors.

If a funeral home provides a service to an individual for one lump sum and does not separate charges for services and tangible personal property, then the sales tax is due on one hundred percent (100%) of the lump sum price. This is a unitary transaction and tax shall be included on all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is included.

Indiana Department of Revenue Sales Tax Information Bulletin #49, part I (Dec. 1997).

The amount of sales tax owed is equal to five percent (5%) of the taxpayer's total gross retail income from taxable transactions, regardless of the amount of tax he actually collects. Ind. Code § 6-2.5-6-7.

"The notice of proposed assessment is *prima facie* evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Ind. Code § 6-8.1-5-1(b). The taxpayer has submitted no evidence to show that the proposed assessment is wrong.

FINDING

The taxpayer's protest is denied.

II. Sales Tax – Responsible officer liability.

DISCUSSION

The taxpayer was personally assessed sales tax liability as a responsible officer.

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
 - (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;
- holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Ind. Code § 6-2.5-9-3.

Various factors are considered when determining whether a person is a responsible officer. Those factors include the person's position within the corporation, the person's authority according to the company's articles of incorporation, and whether the person actually exercised control over the finances of the business. Indiana Department of State Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind. 1995).

The taxpayer in the instant case is the owner of the funeral home as evidenced by the word, "Owner," appearing below his signature and printed name on the protest letters. Additionally the taxpayer personally submitted the limited financial information contained in the Department's file. This evidence is sufficient to meet the requirements set forth in Safayan for determination of responsible officer status.

"The notice of proposed assessment is *prima facie* evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong

rests with the person against whom the proposed assessment is made.” Ind. Code § 6-8.1-5-1(b). The taxpayer has submitted no evidence to show that he is not a responsible officer. The evidence that is available indicates that the taxpayer is a responsible officer and, therefore, personally liable for retail sales tax due the state.

FINDING

The taxpayer’s protest is denied.